**KWONG YIK BANK BHD.**

**v.**

**HAH CHIEW YIN**

FEDERAL COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
GEORGE SEAH FJ
SYED AGIL BARAKBAH FJ
[CIVIL APPEAL NO. 131 OF 1984]
30 OCTOBER 1984

***CIVIL PROCEDURE:*** *Bankruptcy - Appellant obtained judgment against bankrupt - Receiving and Adjudication Orders made against bankrupt - Part settlement of judgment debt - Appellant notified Official Assignee that its claim against bankrupt had been settled - Bankrupt filed notice of motion under s. 105(1) Bankruptcy Act to have the adjudication order annulled - Whether the debts of bankrupt paid in full.*

The appellant obtained judgment against the respondent/bankrupt in the sum of RM30,000. The appellant clamed a Bankruptcy Notice to be issued against the bankrupt and the Receiving and Adjudication Orders were made against the bankrupt. A sum of RM16,000 was later on paid to the appellant with a view to effect a settlement in order to enable the bankrupt to apply to the Court to have the adjudication order annulled. The appellant wrote a letter to the Official Assignee stating that its claim against the bankrupt had been settled by the bankrupt's husband. The bankrupt filed a notice of motion under s. 105(1) of the Bankruptcy Act 1967 ("the Act") to have the adjudication order annulled on the grounds that the debts of the bankrupt had been paid in full. The learned Judge granted an order in terms of the notice of motion. The appellant's Counsel submitted that the learned Judge had erred in law and in fact in holding that the bankrupt had satisfied the second limb of s. 105(1) of the Act.

**Held:**

The relevant part of the second limb of s. 105(1) reads:

> where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full ... the Court may annul the adjudication.

In the circumstances, the bankrupt had failed to satisfy that the proved debt lawfully due to the appellant had been paid in full.

*[Appeal allowed. Order of learned Judge in annulling the adjudication order set aside. Costs to appellant.]*

**Cases referred to:**
*In re Keet [1905] 2 KB 666*
*More v. More [1962] 1 All ER 125*
*In re Hester [1889] 22 QBD 632*

**Legislation referred to:**
Bankruptcy Act 1967, s. 105(1)
Bankruptcy Act 1883 [UK], s. 35
Bankruptcy Act 1914 [UK], s. 29(1)

*For the appellant - S. Achan; M/s. Nik Hussain, Ibrahim & Abdullah*
*For the respondent - Atma Singh Veriah; M/s. Atma Singh Veriah & Co.*

**JUDGMENT**

**George Seah FJ:**

We allowed the appeal and here are our reasons for doing so.

The facts do not appear to be in dispute and may be shortly stated. On 10 September 1976 Kwong Yik Bank Berhad (hereinafter referred to as the appellant) obtained judgment against Hah Chiew Yin (the bankrupt) in the sum of RM30,000 together with interest and costs. In 1979 a sum of RM15,000 was paid towards reduction of the judgment-debt and by 1981 the balance still due and owing plus accumulated interest was RM30,000 or thereabout. In October 1981 the appellant caused a Bankruptcy Notice to be issued against the bankrupt and this was followed by the Creditor's Petition. On 5 July 1982 both Receiving and Adjudication Orders were made against the bankrupt. The Statement of Affairs filed by the bankrupt showed that there was only one creditor, viz. the appellant. The bankrupt's husband then approached the appellant with a view to effect a settlement in order to enable the bankrupt to apply to the Court to have the adjudication order annulled. With the money provided by the bankrupt's brother-in-law a sum of RM6,000 was paid to the appellant on 28 August 1982 and another sum of RM10,000 was paid on 2 November 1982. On receipt of the second payment of RM10,000 the appellant wrote a letter to the Official Assignee.

On 27 January 1983 the bankrupt filed a notice of motion under s. 105(1) of the Bankruptcy Act 1967 to have the adjudication order annulled on the ground that the debts of the bankrupt had been paid in full. The Official Assignee made a report to the Court stating that the appellant had notified him by letter dated 2 November 1982 that its claim against the bankrupt had been settled by the bankrupt husband's. At the hearing of the motion it was the contention of the bankrupt that the appellant had agreed to receive the sum of RM16,000 in full and final settlement of its claim against the bankrupt. The learned Judge found on the documentary evidence that the appellant "had agreed to accept and had accepted RM16,000 in full settlement" and that there was no merit in the objection of the appellant in opposing the motion. He therefore granted an order in terms of the notice of motion.

Before us learned Counsel for the appellant had submitted that the learned Judge erred in law and in fact in holding that the bankrupt had satisfied the second limb of s. 105(1) of the Bankruptcy Act 1967.

The relevant part of the second limb reads "where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full ... the court may annul the adjudication".

It is pertinent to observe that the bankrupt was not applying for an order of discharge but she was applying for an order annulling her adjudication. The effect of this is to wipe out the bankruptcy altogether and put the bankrupt in the same position as if there had been no adjudication order (per Stirling LJ *In re Keet* [1905] 2 KB 666 at p. 676).

It is common ground that our Bankruptcy Act 1967 is modelled along the English Bankruptcy Act 1914 and the phrase in the second limb of s. 105(1) of our Act is in identical terms with the words in the second limb of s. 29(1) of the 1914 Act. The meaning of these words "where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full" was considered by the English Court of Appeal in the case of *In re Keet*. Although the decision was based on s. 35 of the English Bankruptcy Act 1883 it is not disputed that the section corresponded to s. 29(1) of the 1914 Act. *In re Keet* (*supra*) it was held that to satisfy the section the "debts" - including at least all debts which have been actually and properly

proved in the bankruptcy - must have been fully paid in cash, and that the second limb is not satisfied by an unconditional release given to the bankrupt by his creditors. *Keet* case was followed some fifty-seven years later by Cross J in *More v. More* [1962] 1 All ER 125. We have no doubt as to the soundness of this interpretation. In construing the provisions of the Bankruptcy Act 1967 it has to be borne in mind the observations of Fry LJ in *re Hester* [1889] 22 QBD 632 at p. 641:

> I conceive that one of the objects of this statue was, if not to put an end to, yet at least to discourage, private arrangements between a debtor and his creditors. Anyone who knows the history of the law of debtor and creditor of this country, knows that private arrangements between debtors and their creditors have often been scandalous, and that they have given opportunities for misrepresentation, for private bargains, and for undue preferences. I for one should pause long before I allowed the evils of private arrangements between a debtor and his creditors to creep into the administration of this Act ...

We would adopt every word which has fallen from the lips of the learned Lord Justice.

It appears to us that the case of *In re Keet* (*supra*) and *More v. More* (*supra*) had not been cited to the Court below and if the attention of the learned Judge had been drawn to these two authorities he might not have exercised the discretion and made an Order as prayed. On the affidavit evidence adduced before the learned Judge in our opinion, the bankrupt had failed to satisfy that the proved debt lawfully due to the appellant had been paid in full in cash. For these reasons we allowed the appeal of the appellant and set aside the order of the learned Judge in annulling the adjudication order. The appellant is clearly entitled to its costs here and in the Court below. The deposit to be refunded to the appellant.

Also found at [1985] 2 CLJ 31